

JacksonLewis

An Introduction to Collective Bargaining in the Public Sector



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Kristina's practice focuses exclusively on labor and employment counseling and litigation. She represents employers in federal and state court lawsuits and agency investigations, charges and hearings covering a wide range of statutes and subjects, including unfair labor practices, grievances and arbitrations, anti-discrimination and civil rights laws, wrongful termination claims, disability accommodation and access, wage and hour laws, covenants not to compete, leave of absence claims, negligent hire/retention and breaches of fiduciary duty and contract, as well as traditional labor issues, including training, organizational campaigns, bargaining and negotiations. Kristina has litigated class and collective actions, including FLSA, FCRA and discrimination-based class actions. She also represents clients in grievances, mediations, arbitrations and charges before various national and state entities.

As part of Kristina's counseling practice, she provides daily counseling and training to management to help employers avoid litigation. She assists clients with employment agreements, handbooks, background checks and drug testing issues and disciplinary action. She represents employers before the NLRB, EEOC, DOL and numerous state agencies, such as the Virginia Employment Commission, Virginia Department of Labor and Industry, Virginia Department of Housing Discrimination and Virginia Worker's Compensation Commission.



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Milena's practice focuses exclusively on workplace law, including employment litigation, workplace training and preventative client counseling. She defends employers against claims brought under Title VII, ADA, ADEA, FMLA, FLSA and tort claims, including assault and battery, intentional infliction of emotional distress, negligent hire and retention and wrongful discharge in federal and state courts, arbitrations as well as federal, state and local administrative agencies. Milena also provides clients with employee handbook review and training on a variety of employment topics. She frequently presents on employment law topics to local organizations and associations.

Prior to joining Jackson Lewis, Milena was a prosecutor in the Office of the Norfolk Commonwealth's Attorney. While in law school, Milena externed in the Employment Unit for the Office of the Attorney General of Virginia, where she assisted her supervising attorneys in defending the Commonwealth of Virginia and its agencies in employment related claims brought in federal and state court. Milena was also a research assistant for Professor Ann C. Hodges, and assisted her in the drafting of *Public Sector Employment: Cases and Materials*, (West 3d ed. 2016).

History of Public Bargaining in Virginia

Public Bargaining in Virginia

Carter v. Thompson, 164 Va. 312 (1935)

- On February 20, 1934, the Director of Public Safety of the city of Norfolk, with the approval of its City Manager, and through its Fire Chief, issued this order limiting public bargaining for firefighters
- The International Association of Fire Fighters, which was affiliated with the American Federation of Labor, had issued to certain members of the Norfolk fire department a “certificate of affiliation” or charter for a local lodge or association
- Plaintiff challenged the right of the City Manager, who was acting through subordinates, to issue the order and sought an injunction but were denied by the Circuit Court of the city of Norfolk
- The Plaintiff appealed to the Supreme Court of Virginia

Public Bargaining in Virginia

Carter v. Thompson, 164 Va. 312 (1935)

On appeal, the Supreme Court of Virginia ruled:

Under the general scheme of government adopted by the city of Norfolk, control of all municipal departments is vested in a city manager and his subordinates who are responsible to him, subject of course, to charter restrictions. Plainly he has power to discharge an employee for cause where the cause is sufficient. If this were not true orderly government would be at an end. He must, of necessity, be vested with a large measure of discretion and the burden of showing arbitrary action is upon him who charges it. The defendants rely upon a cause stated and claim that it is sufficient.

[1] Police and fire departments are in a class apart. Both are at times charged with the preservation of public order, and for manifold reasons they owe to the public their undivided allegiance. The power in the city of complete control is imperatively necessary if discipline is to be maintained.

[2] For reasons indicated we do not find the order in judgment unreasonable. It is possible that some objections might be made to the final conditions under which it issued. There are no written charges but the issue is perfectly plain; it has been submitted upon its merits and has been decided upon its merits.

Public Bargaining in Virginia

Virginia General Assembly

- In 1946, the General Assembly adopted Senate Joint Resolution 12, which stated that it was against the public policy of Virginia for any public employer to recognize or negotiate with a labor union acting as a representative of any public employees.
 - The Resolution did allow public employees to form organizations not affiliated with any labor union to discuss conditions of employment.
- In, the General Assembly 1973 of House Joint Resolution No. 208, recognizing the right of public employees to contribute to the development of employment policies which affect them

Public Bargaining in Virginia

Attorney General of Virginia

- In the 1960s and 1970s, the Attorney General of Virginia issued a series of conflicting positions on collective bargaining in the public sector
 - Report of the Attorney General (1962-63), at 117: “the policy of the State to be against negotiating with any labor union or its agents with respect to any matter relating to [public employees] or their employment or service.”
 - Report of the Attorney General (1969-70), at 231: “collective bargaining agreement entered into by a school board would be of doubtful enforceability,” and that the authority of political subdivisions to enter into collective bargaining agreements “should be founded on a specific grant of authority rather than implied from the existing powers of political subdivisions.”

Public Bargaining in Virginia

Federal Litigation

- *Carroll v. City of Norfolk*, Civil No. 524-70-N (E.D. Va., April 20, 1971): Court held that a local ordinance forbidding a firefighters' organization to affiliate with a labor union was unconstitutional because it denied employees the right to associate
- *Newport News Fire Fighters Asso. Local 794, etc. v. Newport News*, 339 F. Supp. 13 (E.D. Va. 1972): “Absent any legislative mandate from Congress or the General Assembly of Virginia, we conclude that the City of Newport News is within its rights to refuse to collectively bargain with the plaintiff associations.”

Public Bargaining in Virginia

***Commonwealth v. County Bd.*, Record No. 761421 (Va. Sup. Ct., Jan. 14, 1977)**

- “The question for decision in this case is whether, absent express statutory authority, a local governing body or school board can recognize a labor organization as the exclusive representative of a group of public employees and can negotiate and enter into binding contracts with the organization concerning the terms and conditions of employment of the employees.”
- “We are faced in this case with overwhelming indications of legislative intent concerning the concept of collective bargaining in the public sector. For this court to declare that the boards have the power to bargain collectively, when even the wisdom of incorporating the concept into the general law of the Commonwealth is the subject of controversial public and political debate, would constitute judicial legislation, with all the adverse connotations that term generates. Conscious of the respective roles of the General Assembly and the judiciary, we decline to intrude upon what the Attorney General succinctly describes as a ‘singularly political question.’”

Public Bargaining in Virginia

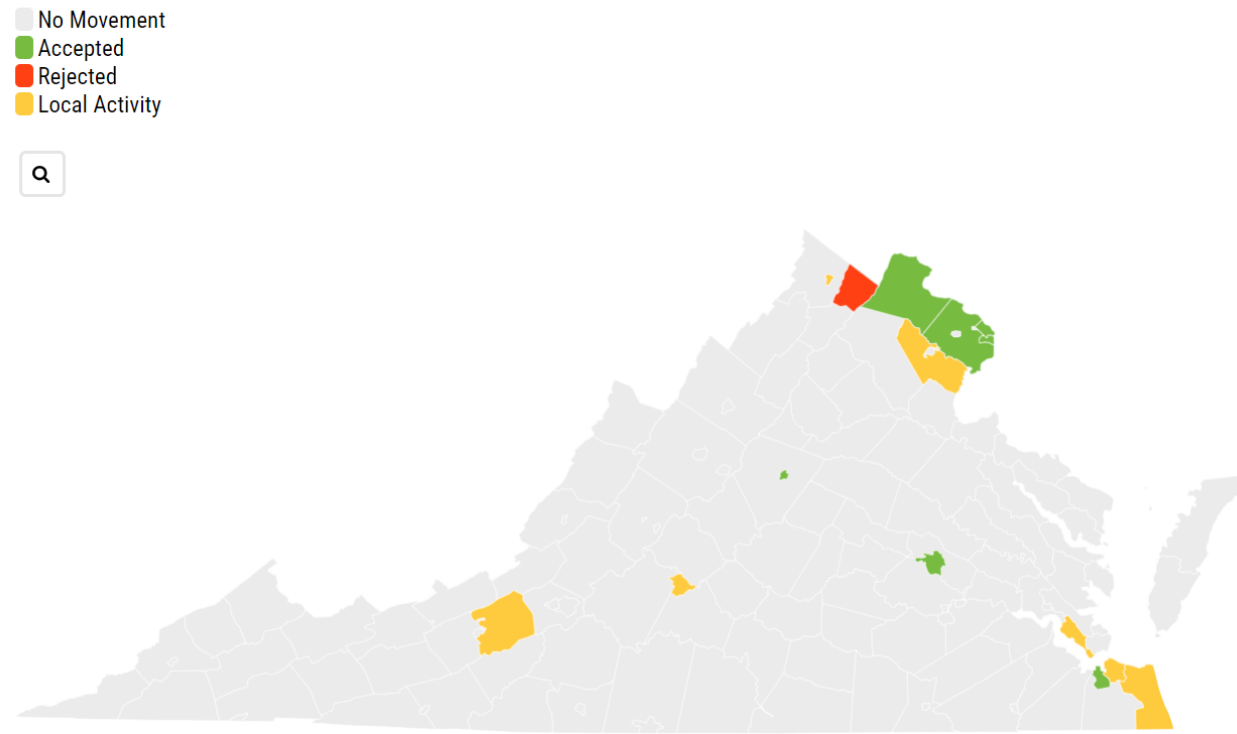
HB 582 and SB 939: Employees of local governments; collective bargaining

- On January 6, 2020, House Delegate Elizabeth R. Guzman introduced ***HB 582 Employees of local governments; collective bargaining***
- On January 13, 2020, Senator Richard L. Saslaw introduced ***SB 939 Employees of local governments; collective bargaining***
- By March 18, 2020, both bills passed the House of Delegates and Senate
- Originally, if, signed into law by the Governor, the bills would have gone into effect on July 1, 2020
- Once the bills reached the desk of Governor Ralph S. Northam, he recommended that they have a delayed effective date of ***May 1, 2021***

Public Bargaining in Virginia

By July 2022, several municipalities passed resolutions and ordinances allowing for public bargaining by municipal workers

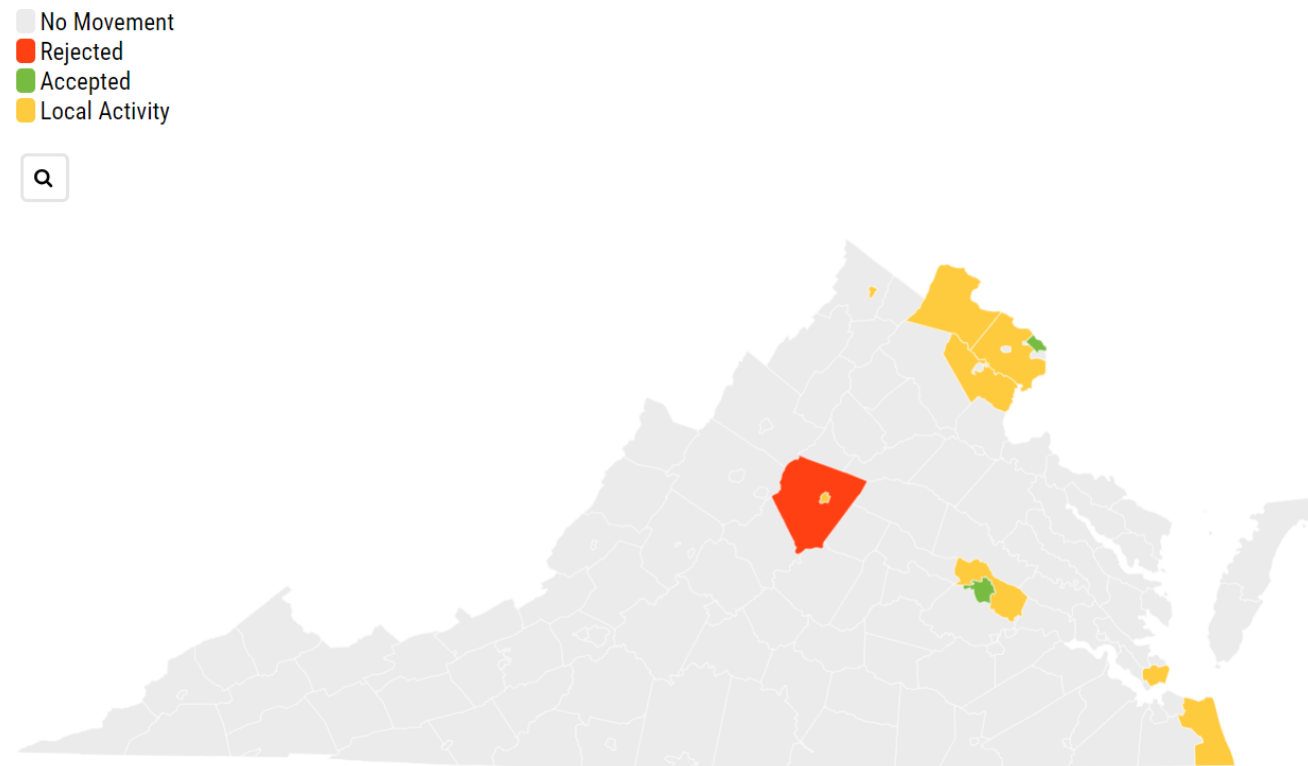
Map of Municipal Worker Collective Bargaining Agreements in Virginia



Public Bargaining in Virginia

By July 2022, several school boards passed resolutions and ordinances allowing for public bargaining by teachers

Map of Teacher Collective Bargaining Agreements in Virginia



Setting Course on Public Bargaining

Section 40.1-57.2 of the Code of Virginia

“No state, county, city, town, or like governmental officer, agent, or governing body is vested with or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents with respect to any matter relating to them or their employment or service *unless, in the case of a county, city, or town, such authority is provided for or permitted by a local ordinance or by a resolution*”

Section 40.1-57.2 of the Code of Virginia

What is collective bargaining?

- Code of Virginia does not define “collective bargaining”
- Historically, it is the process by which representatives of the employer meet with the representatives of the employees (i.e. the union) to negotiate the terms and conditions of employment for employees within the bargaining unit
- The union is the exclusive bargaining agent for the employees within the bargaining unit
- Employers may no longer negotiate directly with employees regarding terms and conditions of employment once union representation is in place

Section 40.1-57.2 of the Code of Virginia

If an ordinance or resolution is passed, the municipality can explicitly define collective bargaining:

- County of Arlington:

Collective Bargaining means to perform the mutual obligation of the county, by its representatives, and the exclusive bargaining representative of employees in an appropriate bargaining unit to meet and negotiate in good faith at reasonable times and places, with the intent to reach an agreement regarding terms and conditions of employment as defined herein, which agreement shall remain in effect until superseded by a new agreement, subject to appropriation of funds by the county board. Collective bargaining shall not mean negotiation as to matters controlled or preempted by any federal or state constitutional provision, law, rule or regulation.

Section 40.1-57.2 of the Code of Virginia

Who Can Engage in Collective Bargaining?

Under the statute, any county, city, or town, which includes *any local school board*

Section 40.1-57.2 of the Code of Virginia

Who Cannot Engage in Collective Bargaining?

“Notwithstanding the provisions of subsection A regarding a local ordinance or resolution granting or permitting collective bargaining, *no officer elected pursuant to Article VII, Section 4 of the Constitution of Virginia or any employee of such officer* is vested with or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents, with respect to any matter relating to them or their employment or service.”

Section 40.1-57.2 of the Code of Virginia

Who Cannot Engage in Collective Bargaining?

- Ultimately, if a municipality adopts a resolution or ordinance allowing for collective bargaining, the municipality can determine who can and cannot be part of the “bargaining unit”
- Historically, a bargaining unit is a group of two or more employees who share a community of interest and may reasonably be grouped together for purposes of collective bargaining
- Common interests can include common supervision, work functions and job duties, and work locations

Section 40.1-57.2 of the Code of Virginia

City of Alexandria:

ARTICLE 1 RECOGNITION

Section A

The City recognizes the IAFF Local 2141 as the exclusive bargaining representative for the Fire and Emergency Medical Services Employees' Bargaining Unit, which shall consist of the uniformed fire employees, including fire marshals, except those excluded by Section 2-5-68 of the collective bargaining ordinance.

Section B

The parties agree that the following ranks and job classifications fall within the bargaining unit:

- a. Firefighter I
- b. Firefighter II
- c. Firefighter III
- d. Firefighter IV
- e. Medic II
- f. Medic III
- g. Medic IV
- h. Fire Lieutenant
- i. Fire Captain
- j. EMS Lieutenant
- k. EMS Captain
- l. Deputy Fire Marshal I
- m. Deputy Fire Marshal II
- n. Deputy Fire Marshal III

The parties agree that, to the extent that positions titles change, positions with equivalent ranks and/or duties to those listed in Section B shall be included in the bargaining unit.

Section 40.1-57.2 of the Code of Virginia

County of Arlington:

F. - Bargaining units.

The county shall recognize only the following bargaining units for the purposes of collective bargaining:

1. Police: The police employees' bargaining unit shall consist of all sworn uniformed employees of the police department, except those excluded by definition under subsection B;
2. Fire and Emergency Medical Services: The fire and emergency medical services employees' bargaining unit shall consist of the uniformed fire employees, including fire marshals, except those excluded by definition under subsection B;
3. Service, Labor & Trades (SL&T): Those eligible classes of full-time employees associated with service/maintenance and skilled crafts, i.e., job classes of workers performing duties that result directly in the comfort, convenience and well-being of the general public, or contribute to the maintenance of capital assets, land and infrastructure of the county;
4. Office and Technical employees (O&T): Those eligible classes of workers other than employees included in the Service, Labor and Trades units or the Professional employees unit.
5. Professional employees: employees meeting the definition of Professional employee in the County Code section.

Section 40.1-57.2 of the Code of Virginia

Who Cannot Engage in Collective Bargaining?

- Historically, supervisory and managerial employees have been excluded from bargaining units
- In the Ordinance passed by the County of Arlington, they defined “employee” as excluding supervisors and managers:

Employee means any employee of the county, except it does *not* include anyone who is:

- (1) a confidential employee, as defined in this subsection;
- (2) a managerial employee, as defined in this subsection;
- (3) a supervisor, as defined in this section;
- (4) temporary seasonal or grant funded employees as defined in applicable county administrative regulations and temporary regular or temporary occasional employed less than 500 hours in a calendar year;
- (5) an intern or volunteer;
- (6) a member of a board or commission, or other appointee of any public body as defined in state law, who is not otherwise an employee of the County; or
- (7) an employee of the courts or of any local constitutional officer as set forth in Article VII, Section 4 of the Virginia Constitution, whether or not the county provides personnel administrative services or supplements state or other funding provided for the personnel of such officers.

Section 40.1-57.2 of the Code of Virginia

What can trigger a vote on the adoption of an ordinance or resolution?

After May 1, 2021, a county, city, or town can voluntarily elect to pass an ordinance allowing for collective bargaining, but employees can also request that the municipality pass such an ordinance or resolution:

“within 120 days of receiving certification from a *majority* of public employees in *a unit considered by such employees* to be appropriate for the purposes of collective bargaining”

Section 40.1-57.2 of the Code of Virginia

What is a unit and is this different from the bargaining unit?

- The Code of Virginia does not define “unit” or identify what constitutes an appropriate unit
- Rather, the statute allows for self-determination of the unit – “a unit *considered by such employees to be appropriate* for the purposes of collective bargaining”
- The statute also does not specify what procedure must be utilized in determining whether there is majority support
 - However, the Statute does require municipalities to provide for procedures for the certification in their ordinance or resolution

Section 40.1-57.2 of the Code of Virginia


What happens when a municipality receives a request to adopt an ordinance or resolution?

“*within 120 days* of receiving certification from a majority of public employees in a unit considered by such employees to be appropriate for the purposes of collective bargaining, *take a vote to adopt or not adopt an ordinance or resolution to provide for collective bargaining* by such public employees and any other public employees deemed appropriate by the governing body”

Section 40.1-57.2 of the Code of Virginia

How long will the whole process take?

Collective Bargaining Timeline

On October 19, 2021, the Fairfax County Board of Supervisors voted to adopt a Collective Bargaining [Ordinance](#) . On June 7, 2022, County Executive Bryan Hill appointed, and the Fairfax County Board of Supervisors confirmed Sarah Miller Espinosa as the County's Labor Relations Administrator (LRA). The LRA will serve as a neutral and implement the provisions established by the ordinance.

Date	Collective Bargaining Activity
April 22, 2020	Virginia General Assembly approved House Bill 582 giving localities the option to implement collective bargaining; effective date May 1, 2021
October 2020	Board of Supervisors Joint Collective Bargaining workgroup established with the Fairfax County School Board
March 2, 2021	Board of Supervisors Personnel Committee Meeting – Public Sector Collective Bargaining Overview
May 25, 2021	Board of Supervisors Personnel Committee Meeting – Review and discussion of Draft Collective Bargaining ordinance
June 29, 2021	Board of Supervisors Personnel Committee Meeting – Review and discussion of revised Draft Collective Bargaining ordinance

Section 40.1-57.2 of the Code of Virginia

How long will the whole process take?

July 15, 2021	Employee Collective Bargaining Town Hall #1
July 20, 2021	Board of Supervisors Personnel Committee Meeting – Review and discussion of revised Draft Collective Bargaining ordinance
August 18, 2021	Employee Collective Bargaining Town Hall #2
Sept. 14, 2021	Board of Supervisors Meeting – Decision as to whether to schedule a public hearing on Collective Bargaining Ordinance
October 5, 2021	Public Hearing on Collective Bargaining Ordinance at Board of Supervisors' Meeting
October 19, 2021	Board of Supervisors Meeting – Collective Bargaining Ordinance approved
June 7, 2022	Labor Relations Administrator appointed by the County Executive and confirmed by the County Board of Supervisors.
TBD	Collective Bargaining Training for Managers
TBD	Establish Labor Relations Office
TBD	Implement Election Process

Section 40.1-57.2 of the Code of Virginia

If an ordinance or resolution is passed, what must be in it?

“Any such ordinance or resolution shall provide for *procedures for the certification and decertification of exclusive bargaining representatives*, including *reasonable public notice and opportunity for labor organizations to intervene* in the process for designating an exclusive representative of a bargaining unit.”

Section 40.1-57.2 of the Code of Virginia

County of Arlington:

H. - Recognition of exclusive bargaining agent.

(1) A bargaining agent shall be the exclusive representative of all employees in an appropriate bargaining unit described in subsection F if the employee organization is selected by a majority of the employees voting in an appropriate bargaining unit in an election conducted pursuant to subsection I, and rules and procedures adopted by the LRA, following a request for recognition. Any cost of such election shall be shared equally by the parties involved.

(2) "Administratively acceptable evidence" to support a petition for recognition or certification by election or for decertification may consist of a combination of membership cards or a membership roster, evidence of dues payment, or other evidence of bargaining unit employees' desire to be represented by an employee organization for collective bargaining purposes. An authorization that satisfies the Uniform Electronic Transactions Act (Virginia Code § 59.1-479 et seq.) including shall be valid for employees' authorization for purposes of a petition filed by a labor organization for exclusive representation. The determination by the LRA of the sufficiency of a showing of support for a representation election shall not be subject to challenge by any person or employee organization or by the county.

Section 40.1-57.2 of the Code of Virginia

County of Arlington:

I. – Request for election.

(1) An employee organization may request an election be held by submitting a petition for an election to the LRA who shall notify the county manager in accordance with procedures set and published by the LRA, including but not limited to provisions for public notice of a petition and election. The petition must represent a showing of interest by at least thirty (30) percent of the employees in a bargaining unit described in subsection F, based upon administratively acceptable evidence.

(2) Any additional interested employee organization must submit a petition of intervention to the LRA, which must be accompanied by a showing of interest by thirty (30) percent of the employees in the appropriate bargaining unit, based upon administratively acceptable evidence, within ten (10) days of notice of the petition.

(3) An election under this subsection shall be held within forty-five (45) calendar days after written notice to all parties and the public of the determination by the LRA of a valid petition for election in accordance with guidelines established by the LRA. If an employee organization receives a majority of the valid ballots cast by the employees in a permitted bargaining unit, it shall be recognized by the county as the exclusive bargaining agent, unless and until the LRA certifies a different organization or otherwise decertifies the agent in accordance with provisions of this Section. However, the county or the employee organization may file exceptions with the LRA in accordance with its rules, and the county need not recognize the employee organization pending the resolution of any process to review those exceptions. In an election in which none of the choices on the ballot receives a majority, a runoff election shall be conducted in which the ballot shall provide for a selection between the two choices or parties receiving the highest and second highest number of ballots cast in the election.

(4) Nothing in this Section shall require or permit an election in any bargaining unit within twelve (12) months after a previous election has been held in such bargaining unit.

(5) No party shall have an advantage over the other in gaining access to employees during organizational or representation campaign activity.

Section 40.1-57.2 of the Code of Virginia

County of Arlington:

J. - Decertification.

(1) Recognition of an employee organization as the exclusive bargaining agent for a bargaining unit permitted by this Section shall continue only so long as such organization satisfies the criteria of this Section.

(2) If a petition for decertification of a recognized exclusive bargaining agent is presented to the LRA showing, based upon administratively acceptably evidence, that at least thirty (30) percent of the employees in the bargaining unit no longer want the employee organization to be their bargaining agent, then the LRA shall hold an election in the manner prescribed in subsection I.

(3) A petition for decertification of a recognized exclusive collective bargaining agent in an appropriate unit may be filed in a thirty-day (30) period between the one hundred eightieth (180th) and one hundred fiftieth (150th) day prior to expiration of any existing collective bargaining agreement for that bargaining unit or any time after that collective bargaining agreement has expired.

(4) For a period of one (1) year following recognition or certification of an exclusive bargaining agent, no decertification petitions may be filed.

(5) An employee organization no longer shall be recognized as the exclusive bargaining agent of the employees in the bargaining unit if a majority of the employees in the appropriate bargaining unit vote in the decertification election to no longer be represented by the employee organization. Decertification shall be effective upon the LRA's certification of the results of such election.

Section 40.1-57.2 of the Code of Virginia

If an ordinance or resolution is passed, what other terms and conditions can be included?

- The Statute does not outline what other terms and conditions are subject to bargaining
- If a municipality passes an ordinance or resolution, it can define the scope of bargaining

Section 40.1-57.2 of the Code of Virginia

What is a Collective Bargaining Agreement (“CBA”)?

- The Statute does not define a CBA and does not outline what terms and conditions must be included in a CBA
- Historically, a collective bargaining agreement is a contract between the employer and the exclusive bargaining agent for the employees outlining the terms and conditions of employment
- The Statute does not indicate how long a CBA must last or the process of ratifying a CBA

Section 40.1-57.2 of the Code of Virginia

What is an Unfair Labor Practice (“ULP”)?

- The Statute does not define a ULP and does not outline the process for filing or adjudicating a ULP
- Historically, the following have been considered examples of ULPs:
 - Threatening employees with loss of jobs or benefits if they should join or vote for a union
 - Threatening to close down the plant if a union should be organized in it
 - Questioning employees about their union activities or membership in such circumstances as will tend to
 - restrain or coerce the employees
 - Spying on union gatherings, or pretending to spy
 - Granting wage increases deliberately timed to discourage employees from forming or joining a union

Section 40.1-57.2 of the Code of Virginia

What is an unfair labor practice (“ULP”)?

- Under the NLRA, the following are examples of unfair labor practices:
 - Threatening employees with loss of jobs or benefits if they should join or vote for a union
 - Threatening to close down the plant if a union should be organized in it
 - Questioning employees about their union activities or membership in such circumstances as will tend to
 - restrain or coerce the employees
 - Spying on union gatherings, or pretending to spy
 - Granting wage increases deliberately timed to discourage employees from forming or joining a union
- The NLRA also includes unfair labor practices on the part of the labor organization or its agent

Section 40.1-57.2 of the Code of Virginia

Who can resolve disputes between the employer and the union?

- The Statute does not outline a process or procedure for resolving disputes that may arise during the negotiation of and duration of the CBA
- Ultimately, the municipality has the discretion to outline a process and procedure in its ordinance or resolution

Section 40.1-57.2 of the Code of Virginia

County of Arlington:

N. – Mediation, Arbitration, Grievance Procedures.

(1) Mediation.

(a) Labor-Management Disputes: The county and an exclusive bargaining agent shall first attempt to resolve labor-management disputes informally by discussion between the parties' designees. In the event that the county and the bargaining agent are unable to informally resolve a labor-management dispute, either party or the parties jointly may submit the dispute to the LRA for mediation pursuant to procedures instituted by the LRA.

(b) Impasse: If after a reasonable period of negotiation over the terms of an agreement there is a dispute over specific issues between the county and the bargaining agent, an impasse may be called by either party and resolution may be sought by submission of those issues for mediation by the LRA or a mediator selected through procedures established by the LRA. The parties shall jointly request mediation within five (5) days of such a declared impasse. Whether impasse is declared as set forth here or triggered by operation of subsection L due to failure to reach agreement by October 1 as provided therein, the LRA or other mediator shall set reasonable deadlines for all steps of the mediation process. Negotiations on other matters may continue throughout impasse procedures.

(c) The mediation process is advisory only, and the LRA or other mediator shall have no authority to bind either party.

(d) The mediation process and any comments, statements or suggestions from the LRA or other mediator or the parties and any documents evidencing the same made or created during the mediation process shall not be disclosed except as required by law or by agreement of the parties.

(e) The parties shall share the costs of mediation equally.

(2) Arbitration:

(a) If the county and exclusive bargaining agent are unable to reach agreement in mediation to resolve (i) any impasse regarding wages, salaries and any forms of monetary compensation, benefits, working conditions affecting physical health and safety and related equipment, administrative procedures/processes for lay-offs or reductions-in-force, and administrative procedures/processes for promotion, or (ii) any labor-management dispute by any deadline set forth in procedures provided in this Section or adopted by the LRA, such impasse as described in this subsection N(2)(a) or labor-management dispute shall be submitted to final and binding arbitration pursuant to procedures adopted by the LRA which shall, at a minimum, require the parties' joint selection of an arbitrator. The parties shall share the costs of arbitration equally.

(b) Each collective bargaining agreement shall contain an employee contract dispute resolution procedure, culminating in final and binding arbitration. This negotiated contract dispute resolution procedure shall be the exclusive procedure available to an employee of a bargaining unit covered by that agreement unless the employee contract dispute is also a grievable matter under Va. Code 15.2-1507(excluding disciplinary actions such as dismissals, demotions or suspensions), in which case the employee may elect to file an employee contract dispute under the procedures in the collective bargaining agreement, or file a grievance under the procedures guaranteed by Va Code 15.2-1507 and any other applicable state laws. The employee contract dispute procedure and grievance procedure shall be mutually exclusive, and an employee's initial election to file an employee contract dispute or grievance shall be binding and irrevocable at the time of filing.

(c) Non-binding arbitration, in accordance with procedures established by the LRA, shall be available for resolution of impasses regarding any matters not set forth in subsection N(2)(a) above. **In the event that the County does not implement the recommendations or resolutions resulting from non-binding arbitration, the County Manager shall, at the next meeting of the County Board, explain why he has not accepted the recommendation**

In making any decision under the impasse procedure authorized by this subsection N(2)(a), the arbitrator shall give weight to the following factors:

- a. The lawful authority of the County;
- b. Stipulations of the parties;
- c. The interests and welfare of the public;
- d. The financial ability of the employer to meet the costs of any items to be included in the agreement;
- e. Comparison of wages, hours, and terms and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and terms and conditions of employment of other persons performing similar services in the public and private sectors, if applicable;
- f. The average consumer prices for goods and services, commonly known as the cost of living;
- g. The overall compensation presently received by the employees involved in the arbitration;
- h. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings; and
- i. Such other factors that are normally or traditionally taken into consideration in the determination of wages, hours, and terms and conditions of employment through voluntary collective bargaining, mediation, arbitration, or otherwise between the parties, in the public sector.

Section 40.1-55 of the Code of Virginia

Can unionized employees strike?

“Any employee of the Commonwealth, or of any county, city, town or other political subdivision thereof, or of any agency of any one of them, who, in concert with two or more other such employees, for the purpose of obstructing, impeding or suspending any activity or operation of his employing agency or any other governmental agency, strikes or willfully refuses to perform the duties of his employment shall, by such action, *be deemed to have terminated his employment and shall thereafter be ineligible for employment in any position or capacity during the next 12 months by the Commonwealth, or any county, city, town or other political subdivision of the Commonwealth, or by any department or agency of any of them.*”

Employee Interest and Employer Concerns

Employees May Express Interest in Joining Unions For a Variety of Reasons, Including:

- Higher wages
- Better benefits
 - Time off (paid vacation, paid sick leave, paid time off)
 - Healthcare
 - Retirement and pension plans
 - Life insurance
- Better working conditions
 - Improved safety
 - Fairness and equity in the workplace

Employees May Express Interest in Joining Unions For a Variety of Reasons, Including:

- Grievance procedure
- Job security
- Voice in their workplaces

Employees May Express Interest in Joining Unions For a Variety of Reasons, Including:

- Since the passage of Section 40.1-57.2, the Commonwealth Institute for Fiscal Analysis has issued several Research and Policy Statements in support of public bargaining in the following:
 - Loudoun County
 - Fairfax County
 - City of Newport News
 - City of Virginia Beach
 - City of Richmond
 - Prince William County

Employees May Express Interest in Joining Unions For a Variety of Reasons, Including:

- According to their Research and Policy Statements:
 - “Local public employees in Virginia are typically paid 29.9% less than their private-sector peers with similar levels of education, age, and hours worked, one of the largest pay penalties in the country.”
 - “Employee benefits for local public employees in Virginia are less generous than in other parts of the country, and many private-sector employees, particularly full-time employees of large companies, receive generous benefits. For Virginia as a whole, the estimated total compensation penalty for local employees compared to their private-sector peers is 28.0%”

More Information:

- Loudoun County (<https://thecommonwealthinstitute.org/research/coming-together-for-loudoun-county-collective-bargaining-strengthens-communities-and-families/>)
- Fairfax County (<https://thecommonwealthinstitute.org/research/rebuilding-stronger-for-fairfax-county-collective-bargaining-advances-equity-and-strengthens-families/>)
- City of Newport News (<https://thecommonwealthinstitute.org/research/prioritizing-public-workers-how-collective-bargaining-can-help-public-employees-in-newport-news-achieve-an-equitable-and-quality-workplace/>)
- City of Virginia Beach (<https://thecommonwealthinstitute.org/research/rebuilding-stronger-for-virginia-beach-collective-bargaining-advances-equity-and-strengthens-families/>)
- City of Richmond (<https://thecommonwealthinstitute.org/research/coming-together-in-richmond-city-collective-bargaining-advances-equity-and-strengthens-families/>)
- Prince William County (<https://thecommonwealthinstitute.org/research/coming-together-in-prince-william-collective-bargaining-advances-equity-and-strengthens-families/>)

Possible Employer Concerns Regarding Collective Bargaining

- CBAs can limit flexibility and the ability to quickly respond
- Loss of direct communications between supervisors and employees
- Overemphasis on “seniority” in the employment relationship
- Unions can sometimes be viewed as adversarial
- CBAs may require layers of review and new formalities
- Increased operating costs
- Strikes

Increased Operating Costs

- An increase in wages and benefits for employees may mean an increase in payroll costs and expenses
- Costs associated with drafting and implementing an ordinance or resolution and negotiating and managing the CBA
- Creation of new job positions specific to collective bargaining

Increased Operating Costs

- Fairfax County for FY 2022:

Collective Bargaining

An increase of \$0.96 million and 6/6.0 FTE new positions are included to provide resources for collective bargaining, as the Board of Supervisors is expected to adopt an ordinance implementing collective bargaining in the County per legislation adopted by the 2020 General Assembly Session. This funding supports five positions in the Department of Human Resources as well as one position in the Office of the County Attorney to provide legal support.

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- Fairfax County Public Schools for FY 2022:

Collective Bargaining Team

The Code of Virginia has been updated to authorize collective bargaining with bargaining units for public employees beginning May 2021. Funding of \$0.5 million includes a 1.0 assistant division counsel position, a 1.0 director position (chief negotiator) to lead negotiations, and a 1.0 specialist position to support new collective bargaining requirements and activities.

**\$0.5 million
3.0 positions**

The Code of Virginia has been updated to authorize collective bargaining with bargaining units for public employees beginning May 2021.

Divisionwide Global

Increased Operating Costs

- Loudon County for FY 2022:

Collective Bargaining Staffing

Effective May 1, 2021, the Code of Virginia § 40.1-57.2 allows for collective bargaining between counties and their employees where the locality has provided for it in a local ordinance or resolution, and collective bargaining is one of the five strategic focus areas identified in the Board's 2020-2023 Strategic Work Plan. The Board approved initial staffing (3.00 FTE) for a collective bargaining structure as FY 2021 mid-year additions through the FY 2020 Fund Balance item on December 15, 2020.² These positions are one labor relations manager in the Department of Human Resources (HR), one assistant county attorney in the County Attorney's Office, and one management analyst in the Department of Finance and Budget (DFB).

The FY 2022 Adopted Budget includes positions for collective bargaining needed for initial implementation, including five positions and \$300,000 in reoccurring contractual costs to support and administer a collective bargaining structure. These positions include two labor relations analysts in HR, one assistant county attorney in the County Attorney's Office, and one senior management analyst and one payroll accountant in DFB. Additional staffing will be requested in FY 2023.

Board Strategic Initiatives				
Multiple	Adult Drug Court Expansion	Board	\$913,993	5.00
Multiple	Body-Worn Cameras	Board	\$2,321,799	5.00
Multiple	Collective Bargaining	Board	\$966,263	5.00
Office of the County Administrator	Social Media Communications Manager	Board	\$129,997	1.00
Office of the County Administrator	Videographer	Board	\$114,568	1.00
PRCS	YAS Expansion	Board	\$61,618	1.33
PRCS	Trail Crew	Board	\$495,220	2.00
Board Strategic Initiatives			\$5,003,459	20.33

Increased Operating Costs

- Arlington County for FY 2022:

FISCAL IMPACT: The impact of future collective bargaining agreements on wages, benefits and operational costs will be determined once negotiations are complete. It is currently anticipated that the initial collective bargaining agreements will go into effect in FY 2024.

In terms of administrative costs related to collective bargaining, the adopted FY 2022 budget included \$350,000 for outside legal services and a new position respectively in the County Manager's Office (CMO) and the Human Resources Department (HRD) for the resources needed for this first phase of implementation. It is anticipated that substantial additional resources will be needed in future years in the County Attorney's Office, the Department of Management and Finance, CMO and HRD, as well as operating departments to implement collective bargaining. As a comparison, the City of Alexandria recently authorized \$850,000 (mix of contractual costs and four positions) to support the initial phases of collective bargaining; Loudoun County preliminarily estimated (in November 2020) that it would need \$1.4 million and 12 positions.

Increased Operating Costs

- City of Alexandria for FY 2022:

Finally, as a result of a new state law that authorizes local governments to undertake collective bargaining with their employees, City Council is considering a City employee collective bargaining ordinance to promote orderly and constructive relationships between the City and its employees. Consequently, the proposed budget includes an \$850,000 contingent for collective bargaining staffing costs. The impact of collective bargaining agreements, once the process of labor organization recognition and negotiations are completed, will likely be realized in FY 2024 at the earliest.

Increased Operating Costs

- City of Alexandria for FY 2022:

City Attorney The approved FY 2022 budget adds funding for a full time Assistant City Attorney position to the City Attorney's Office as part of the reallocation of \$850,000 in contingent reserves included in the proposed FY 2022 budget for costs associated with implementing the recently adopted Public Employee Collective Bargaining Ordinance.	1.00	\$100,000
City Manager's Office The approved FY 2022 budget adds \$225,000 for a Chief Labor Relations Officer position (1.0 FTE) and \$275,000 for outside consulting services to the City Manager's Office as part of the reallocation of \$850,000 in contingent reserves included in the proposed FY 2022 budget for costs associated with implementing the recently adopted Public Employee Collective Bargaining Ordinance.	1.00	\$500,000
Human Resources The approved FY 2022 budget adds a Labor Relations Manager position (1.0 FTE) and a Human Resources Generalist position (1.0 FTE) to the Department of Human Resources as part of the reallocation of \$850,000 in contingent reserves included in the proposed FY 2022 budget for costs associated with implementing the recently adopted Public Employee Collective Bargaining Ordinance. These positions will be responsible for supporting the City's collective bargaining process including collective bargaining contract administration; grievance hearings, mediation, and arbitration case preparation; labor management meetings; training for departments related to rights and obligations under labor agreements, applicable labor laws, regulations, policies, and procedures; collective bargaining negotiations; and assisting in the development of bargaining plans and strategies.	2.00	\$250,000

Questions?

JacksonLewis

Thank you.